

Manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, may assume the responsibility for accounting and paying to the Department all tax accruing under the Act with respect to such sales, if the retailers who are affected do not make a written objection to the Department to the arrangement. See 86 Ill. Adm. Code 130.550. (This is a GIL.)

September 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 22, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

TAXPAYER (hereinafter referred to as 'Taxpayer') respectfully requests a letter ruling from the Illinois Department of Revenue (hereinafter referred to as 'the Department' or 'the State') as to the administration of your jurisdiction's sales tax in consideration of the following facts and circumstances.

### **Issue**

Under the proposed tax reporting process as outlined below, may TAXPAYER collect and remit sale taxes, which are received by consultants when making retail sales to home party participants, directly to your jurisdiction?

### **Facts**

TAXPAYER is a multi-level marketing organization which markets and sells decorative crafts and paint kits. Taxpayer utilizes independent consultants to market the painting and crafts products to the general public. The sales consultants receive training in the use of these products. These consultants are independent contractors and are not employees of TAXPAYER.

The consultants are required to purchase a starter kit to be used for training, presentation and/or teaching purposes. Once trained, the consultants participate in home parties to illustrate this proprietary painting technique and to market the craft projects. During the parties, or immediately thereafter, the party participants place orders for merchandise from the consultants. The retail price of the merchandise includes a markup, which generates a profit for the consultants. The consultants then place orders through Taxpayer for such merchandise at a wholesale price and the goods are subsequently drop shipped to the consultants for delivery to the respective party participants.

### **Current Tax Reporting Process**

The consultants are acting as dealers making retail sales and should register for sales and use tax purposes with the respective taxing authorities. When purchasing merchandise from TAXPAYER for resale to party participants, the consultants would present Taxpayer with an exemption certificate relieving Taxpayer of the obligation to collect sales tax on the wholesale sales. However, the consultants would then be required to collect sales tax on the retail sale of such merchandise to the party participants.

Although the majority of TAXPAYER's sales to the consultants are exempt as wholesale sales, some retail sales do occur, such as the starter kits sold to consultants for their own use and consumption. Therefore, both TAXPAYER and the consultants, have responsibility for billing and collecting sales tax at each level of the sale of merchandise, which requires both to file monthly sales and use tax returns in the states in which they do business.

### **Proposed Tax Reporting Process**

When the consultants purchase merchandise from TAXPAYER for resale to the party participants, TAXPAYER will bill the consultants for sales tax on the retail price of the goods, rather than the wholesale price. To facilitate the appropriate application of tax, the invoices to the consultants for the merchandise ordered from Taxpayer may reflect both the wholesale and retail prices for such merchandise with the appropriate tax calculated on the retail price. The total invoice amount will reflect the wholesale price for the merchandise plus sales tax based upon the retail price. The consultants will continue to bill its party participants for the sales tax on the retail price of their order, but they will retain the sales tax as reimbursement for the tax already paid to TAXPAYER.

Therefore, TAXPAYER will be solely responsible for filing monthly sales and use tax returns and remitting the appropriate sales tax collected from the consultants. The consultants will have no sales and use tax filing responsibility.

### **Conclusion**

In light of the tremendous compliance burden created by the current tax reporting process, we believe that the proposed tax reporting process will ease the administrative burden of complying in your jurisdiction by centralizing the sales tax remittance function at the Taxpayer level. This process also affords State the assurance that proper tax compliance will occur and all sales tax dollars owed will be remitted, thereby reducing your administrative costs related to sales tax compliance.

If the Department has any questions or requires any additional information from Taxpayer in order to render an opinion on this issue, please contact me directly. Thank you in advance for your cooperation and attention to this matter.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See 86 Ill. Adm. Code 130.101 and 130.201.

The legal incidence of the Retailers' Occupation Tax falls on the sellers, who generally reimburse themselves by collecting Use Tax from its customer. A purchaser is liable for the Use Tax and is required to pay Use Tax to the seller or directly to the Department. See 86 Ill. Adm. Code 150.130. The retailer must remit the Use Tax that he collects to the Department. However, since the Retailers' Occupation Tax and Use Tax work together in a complementary manner, the retailer may reduce the amount of Use Tax he must remit by the amount of Retailers' Occupation Tax (if any) that he is required to and does pay to the Department with respect to the same sale.

Please refer to 86 Ill. Adm. Code 130.550, wherein it is permissible for manufacturers, importers and wholesalers whose products are sold at retail in Illinois by numerous retailers, and who wish to do so, to assume the responsibility for accounting and paying to the Department all tax accruing under the Act with respect to such sales, if the retailers who are affected do not make a written objection to the Department to this arrangement, and provided that such arrangement in any given case is acceptable to the Department.

Please keep in mind that if distributors who are affected by the agreement make written objection to the Department, such distributors may opt out of the agreement and remit their own taxes. The registrant would assume full responsibility for the collection, accounting and reporting of tax from the independent affiliate taxpayers on the retail price of the tangible personal property sold in Illinois.

Enclosed is a standard Agency Agreement the Department utilizes when a manufacturer or wholesaler wishes to assume liability for collecting and remitting Retailers' Occupation Tax on behalf of its distributors. Should your clients wish to enter into the Agency Agreement with the Department, you must complete and return the enclosed form to Gail Jayne for approval. You may contact her at:

Ms. Gail M. Jayne  
Illinois Department of Revenue  
Office of Central Registration  
Mail Code 3-222  
101 West Jefferson  
Springfield, Illinois 62794

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

EEB:msk  
Enclosure